

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

STEVEN PANKEY,

Plaintiff,

vs.

9:08-CV-1298

**WILLIAM BROWN, Superintendent,
Eastern Correctional Facility, et al.,**

Defendants.

APPEARANCES:

OF COUNSEL:

Steven Pankey
Uplifting Men, Inc.
831 Monroe Street
Brooklyn, New York 11221
Plaintiff, *Pro Se*

Hon. Andrew M. Cuomo
Attorney General for the State of New York
The Capitol
Albany, New York 12224
Attorney for Defendants

Megan M. Brown, Esq.

Norman A. Mordue, Chief U. S. District Judge

ORDER

The above matter comes to me following a Report-Recommendation (Dkt. No. 30) by Magistrate Judge George H. Lowe, filed September 23, 2009, recommending that defendants' motion to dismiss (Dkt. No. 13) be granted. Plaintiff has not objected to the Report and Recommendation. Failure to object to any portion of a report and recommendation waives further judicial review of the matters therein. *See Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993). Accordingly, this Court adopts Magistrate Judge Lowe's recommendation and dismisses the action without prejudice to the service and filing of an amended complaint within 30 days.

Also pending are two motions by plaintiff for appointment of counsel (Dkt. Nos. 23, 26). The motions are denied without prejudice to renewal in the event that plaintiff timely files and serves an amended complaint.

It is therefore

ORDERED that the Report-Recommendation (Dkt. No. 30) is hereby adopted; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 13) is granted and the case is dismissed without prejudice to the filing of an amended complaint within 30 days of the date of the Memorandum-Decision and Order herein; and it is further

ORDERED that plaintiff's motions (Dkt. Nos. 23, 26) for appointment of counsel are denied in accordance with this Memorandum-Decision and Order; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon all parties and the Magistrate Judge assigned to this case.

IT IS SO ORDERED.

Date: October 16, 2009
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge